



**BOARD OF ADJUSTMENT
REGULAR MEETING
THURSDAY, JUNE 01ST, 2023
ASSEMBLY HALL**

**395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA**

04:00 PM or IMMEDIATELY FOLLOWING THE P&Z MEETING

Board Members Present:

Jack Farrell, Vice Chair
Julia Latham
Jeremy Hooper
Paul Roberts
Matt Jones
Bruce Hironimus, Alternate

Board Members Absent:

Sonja Rothstein, Alternate
Louise Mercuro, Alternate

Staff Present:

Alex Cameron, Planning Director
Maria Carpenter, Planner
Kelly Brown, Planning & Zoning
Specialist
Shannon Konstantinou, Clerk to the Board
Josh Dockery, IT Technician
Paul Connors, IT Technician

Approximately 6 member(s) of the public in attendance.

I. Call to Order

Mr. Farrell called the June 01st, 2023 Regular Meeting to order at 04:10 PM.

II. New Business

a. Board Organizational Items

i. Appointment of Regular / Primary Members

Mr. Hooper moved to appoint Mr. Matt Jones and Mr. Paul Roberts as regular / primary members of the Board of Adjustment. Seconded by Ms. Latham. Approved by a vote of 3-0.

The Board and Staff discussed the need to consider a replacement for Ms. Latham during a future meeting as Ms. Latham's term on the Board will be expiring at the end of July 2023, the need for Ms. Latham's replacement to be a resident from the Pinehurst Extraterritorial Jurisdiction (ETJ), and asked that anyone present or watching the livestream who is interested in being the ETJ representative to replace Ms. Latham to, please, apply and let their interest be known.

III. Approval of Minutes

a. 01-05-2023 Regular Meeting Minutes

Mr. Hooper moved to approve the minutes of the January 05th, 2023 Regular Meeting. Seconded by Mr. Jones. Approved by a vote of 5-0.

Mr. Farrell gave a brief introduction to the procedures and requirements of a Public Hearing.

IV. Public Hearing

Mr. Hooper moved to recess the Regular Meeting and enter into the Public Hearing. Seconded by Mr. Roberts. Approved by a vote of 5-0.

Ms. Carpenter was sworn into the Public Hearing and testified as follows.

Mr. Hooper disclosed a personal relationship with the Applicant but stated this personal relationship would not affect his ability to make an impartial decision. The Board did not have any objection to Mr. Hooper retaining his seat on the Board for the Public Hearing.

All Board members stated they had visited the site but did not have any ex parte communication.

a. PLN-2023-00194 (185 Canter Ln. Variance Request)

The purpose of the public hearing is to receive testimony for a variance request from Section 9.13 Fences, Walls and Columns as it relates to a retaining wall at the property addressed as 185 Canter Lane further identified as parcel ID# 00018577.

Ms. Carpenter discussed the proposed work and submitted into evidence the Staff Report with attachments / exhibits, Presentation, and Application and Applicant's materials / exhibits. Mr. Farrell accepted the materials submitted by Ms. Carpenter into evidence.

The Board and Ms. Carpenter discussed the Applicant choosing not to build into the wetlands despite wetland development being permitted on the lot (the community was planned and subdivided prior to the current wetland development regulations), the variance request being submitted after the construction of the retaining wall was completed, the post-completion variance request being similar to a prior variance request in the No. 6 neighborhood and the need to evaluate each case separately, the construction of the retaining wall being discovered during an inspection (which is when the engineer drawings / plans were requested and a request to stop work was made), the plans dated July 2022 showing a retaining wall was contemplated for the site due to the topography but the encroachment of the retaining wall into the setback was not depicted, the date the inspector initially discovered the construction of the retaining wall being January 2022 and the July 2022 plan being created after the construction of the retaining wall was discovered, and the need to get clarification from the Applicant when the construction of the retaining wall began and whether the retaining wall was initially planned or added to the plan at a later date.

Mr. Derek Simmons and Mr. Archie Simmons were sworn into the Public Hearing.

Mr. Derek Simmons and Mr. Archie Simmons stated, during the process of building the house, it was found a retaining wall would be needed due to the slope of the lot

prohibiting plateauing; the retaining wall was constructed to help prevent erosion; there was an initial failure to get permission to build the retaining wall ahead of time, but, after speaking with the Inspector, the guidelines provided have been followed; the length of time between the initial discovery of the retaining wall by the Inspector and the submission of the requested documents and the variance application being due to the excessive wait time for engineers to draft the plans; completion of the development only being 2-3 weeks' worth of work; and the concern is not with the work matching the renderings at this time but with the integrity of the retaining wall and compliance with the requested variance.

The Board, Mr. Derek Simmons, Mr. Archie Simmons, and Ms. Carpenter discussed Mr. Derek Simmons decision not to encroach on the wetlands in order to develop the lot being based on his desire to develop the lot the right way the first time to avoid any potential structural issues or issues with wetland protection legislation, the placement of the structure being as much to the front of the lot being to keep the structure as high and out of the water table as possible, drain lines having been installed underneath the entire structure, potential problems with settling / sliding of the structure had the structure been built any further back on the lot, the potential settling / sliding of the structure that would occur had the structure been placed further back on the lot being discovered as the clearing and grading of the lot began for development and the topography of the lot became clearer (not wetlands in general), the finished floor height of the structure being at 90' as depicted in the 2021 submission, the site layout as originally planned varying from what was built being due to the need to add retaining walls as development was being done and the existing retaining walls having been placed on the submitted lot plan by the surveyor, the plan to infill and landscape in front of the retaining wall to soften the look of the retaining wall, the need to bring in almost 6 times the normal amount of fill dirt in order to develop the lot (normal lot requires about 4 loads, this lot will require about 24 loads once fully completed), the remaining lots available for development being infill lots and difficult to develop without some type of engineering, the driveway needing to be constructed of concrete in order to prevent washout of the driveway should it be constructed of gravel instead, additional measures to help mitigate water issues on the property consisting of foundation drains / rubberized coating / check dams / swales / grading / landscaping, the design of the structure being based on Mr. Derek Simmons' grandmother's home, the choice to locate the garage underneath the main living level of the structure being made to keep the front façade of the structure open and to help create usable living space, placing a front facing garage on the structure requiring an additional 10-15 truckloads of fill and eliminating any type of backyard space, the plans as originally submitted to the Village in order to obtain a permit not containing a retaining wall, the lot on the left side of the property in question having had significant / severe wetlands issues that had to be corrected and the lot on the right side of the property not having as severe a slope to the lot as the property in question, the placement of the entry door to the left side of the front façade prevents sloping down to the driveway (only 13 feet from the front entry door to the end of the structure to slope down between 10-12 feet), the

realization a retaining wall over 3' would be needed was made in April after the foundation walls began to be constructed, the height of the retaining wall varying from 12" closest to the front of the property to 9' closest to the rear of the property, the height of the retaining wall being measured after backfill is completed, the materials of the retaining wall consisting of block topped by stone caps and faced with stone, various options to reduce the height of the retaining wall with additional grading or raised beds with landscaping, the topography of the lot requiring the use of retaining walls in general not just for the design of the structure, Mr. Derek Simmons having close to 15 years of construction experience, and the lots available for development within the Village being less desirable lots.

Mr. Farrell asked if there was any member of the audience wishing to provide testimony either in favor or against the requested variance.

Ms. Sheryl Robinson was sworn into the Public Hearing.

Ms. Robinson, 195 Canter Ln., expressed concern over additional storm water runoff onto her property caused by the development and infill, reviewed precautions taken when developing her lot so any additional runoff was directed away from adjacent properties, asked that the Village take measures to prevent erosion to adjacent properties when development is proposed, expressed concerns over erosion already occurring due to the development, asked whether landscaping can be used to help control erosion and the impact of additional runoff, and expressed concern over sediment from the site running into the creek due to a breakdown of the silt fence in several locations (the creek is part of the Cape Fear River Basin).

Mr. Farrell asked Ms. Robinson if the retaining wall that was built on the opposite side of the site to her property is affecting her property in any way. Ms. Robinson stated no, and that she had actually hoped Mr. Derek Simmons was coming before the Board to ask permission to build retaining walls along all 3 sides of the property. Ms. Robinson further stated her property consists of two lots and is fairly protected but she would have purchased the property at 185 Canter Ln. if she had known it was for sale to prevent development of the lot.

Mr. Farrell asked if there were any other members of the audience who wished to provide testimony. None came forward.

Mr. Simmons stated a swale will be built on the right side of the property to direct the water down towards the creek in addition to further landscaping being done.

The Board, Mr. Derek Simmons, Mr. Archie Simmons, and Ms. Carpenter discussed the grading / slope from 185 Canter Ln. to 195 Canter Ln. not being significantly different and very little changes will be made to the grading / slope during completion of the development (only the final grade and erosion control is

left to be done), and runoff mitigation efforts (swales, rip rap, etc.) being used instead of a catch basin and to create a dry stream to direct water to the creek.

Mr. Farrell reviewed the Standards for granting a variance the Board must follow when making a consideration on the request for 185 Canter Ln.

Mr. Cameron provided guidance to the Board regarding making a motion on the requested variance, and what conditions the Board may impose upon the Applicant as part of the motion.

The Board discussed what options the Applicant would have should the variance request be denied, the need for builders considering similar lots to take note of the fact that they need to seek permission to construct retaining walls prior to construction being done, and debated what, if any, design modifications could be made to eliminate the need for a retaining wall that exceeds the allowable height.

Mr. Alex Cameron was sworn into the Public Hearing.

The Board, Mr. Derek Simmons, and Mr. Cameron discussed a railing or screen being needed at the top of the retaining wall to meet building code, and various options to help reduce the grade difference around the retaining wall and soften the appearance of the retaining wall that encroaches into the setback.

The Board debated whether continuing the hearing to the next Regular Meeting in July 2023 in order to allow the Applicant time to research and provide alternative solutions to the retaining wall variance request would be beneficial, and what would be required of the Applicant if a new or additional retaining wall was to be constructed.

The Board deliberated on making a motion and what, if any, conditions to include in the motion.

Mr. Jones moved the Board of Adjustment approve with conditions the variance request for 185 Canter Ln. AND adopt the following Findings of Fact:

- A. Unnecessary hardship would result from the strict application of the ordinance because the house has already been constructed.***
- B. The hardship results from conditions that are peculiar to the property because of the proximity to wetlands and stream, and significant elevation changes across the property.***
- C. The hardship did not result from actions taken by the applicant or the property owner because of the topography of the lot and presence of wetlands and stream.***

D. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved because it provides for consistent design and appearance.

Conditions (if imposed by the Board and must be reasonably related to the request): The retaining wall may not exceed 54" in height for a distance not encroaching more than 10' into the front yard setback.

Ms. Latham asked for an amendment to Mr. Jones' motion to strike from item A the hardship being due to the house already having been constructed and replace this reason with the hardship being due to the topography / slope / placement of the wetlands impacting the buildability of the lot.

Motion amended to read as follows for item A:

A. Unnecessary hardship would result from the strict application of the ordinance due to the topography, wetlands, and characteristics of the land.

Seconded by Mr. Hooper. Approved by a vote of 5-0.

Mr. Hooper moved to adjourn the Public Hearing and re-enter the Regular Meeting. Seconded by Mr. Roberts. Approved by a vote of 5-0.

V. Next Meeting Date

a. 07-06-2023 Regular Meeting (If Board Has Business to Conduct)

VI. Motion to Adjourn

Mr. Roberts moved to adjourn the Regular Meeting. Seconded by Mr. Hooper. Approved by a vote of 5-0 at 06:02 PM.

Respectfully Submitted,



Shannon Konstantinou

Clerk to the Board &

Planning Administrative Specialist

Village of Pinehurst

A videotape of this meeting is located on the Village website: www.vopnc.org.

The Village of Pinehurst is a charming, vibrant community which reflects our rich history and traditions.

Mission: Promote, enhance, and sustain the quality of life for residents, businesses, and visitors.

Values: Service, Initiative, Teamwork, and Improvement.